

Testimony by Pat Keim on behalf of Columbia Grain, Inc on HB 476 Creating a landlord lien

Columbia Grain Inc. opposes HB 476

Columbia Grain often provides seed to growers with payment differed until the crop is sold. This loan is secured with a lien for the value of the seed.

This bill jeopardizes that program which actually works to the advantage of both the producer and the landlord. If this bill is implemented we may need to revert to a cash basis for seed.

Section 1 of this bill would require grain buyers to determine if rent has not been paid. This puts the buyer between the landlord and the tenant and makes the crop less attractive to purchase.

It should be up to the landlord to deal with the tenant. They are the ones who put the tenant on the land. How would the buyer know whether the two are on good terms? Grain buyers should not be placed in the position of go between, arbiter, and tenant rent payer.

Section 8 changes the entire lien priority system to favor the landlord. This section is that part that really concerns us the most. It usurps the investment of other lien holders and subordinates all of them to the landlord's claim. It basically dismembers a long standing prioritization system and overrides the rights and ability of the laborer, supplier, and service provider to recoup their investment. This is unwise because these are the people on whom the tenant and landlord must depend to get the crop in the ground, harvested, and marketed. Without their work and service there would be no crop unless they were willing and able to do everything on a straight cash up front basis. That's because very few would be likely to provide the services and material in advance of payment absent a secure lien.

Columbia Grain Inc often provides crop seed with payment secured by a seed lien. Tenants depend on and benefit from that and so do the landlords because neither has to up front the money. If this bill is enacted we might not do this because we would be uncertain of recouping the investment in the event of default on rent payment. Without seed the crop would not get planted. Without the crop the tenant would go bankrupt and the landlord would not get paid.

Here are some other important shortcomings in this bill to consider.

1. This bill wouldn't require the landlord lien to be registered with the Secretary of state like other liens. We would automatically revert to just putting landlord names on the check and letting the tenant deal with it whether a lien is filed or not. We can't be looking in 3 different places to figure out all the liens in place.

2. The bill provides no foreclosure on the landlord lien meaning it could be in place for forever and possibly/probably after lien is satisfied. This means the lien could follow the product all the way to the grocery store shelf. New Sect 1 page 1 line 13 and Sect 2 page 1 line17-18

3. Unpaid rent in New Section 1 page 1 line 13-14 includes "products and proceeds". This leads to the question. Does it follow the wheat to the flour mill, to the bakery, and on to the store?

4. The bill doesn't distinguish between cash or crop lien

5. The bill doesn't describe what constitutes a default. Is it cash or just that the landlord doesn't like the tenant.

6. Priority of the lien doesn't mean you can determine the value of the lien as called for in New Section 2 Page 1 line 18.

7. When does the landlord's lien take effect? Sect 1 page 1 line 13-14 says (A landlord's lien becomes effective when the crop becomes a growing crop. Section 3 page 1 line 21-22 says "...must be perfected on or before 30 days after the crop becomes a growing crop."

8. When does a crop become a growing crop? Is it at planting, seed germination, when the sprouts show, when the heads form?

Ag and crop lien law is a complex matter. Changes like this can upset long standing balances and cause a host of unintended adverse consequences. Revisions should be made with greater care than single legislative session time provides to avoid doing more harm than good.